

#### § 422.1088

When CMS imposes a civil money penalty, notice of the Board's decision (or denial of review) is the final administrative action that initiates the 60-day period for seeking judicial review.

#### § 422.1088 Extension of time for seeking judicial review.

(a) Any affected party that is dissatisfied with a Departmental Appeals Board decision and is entitled to judicial review must commence civil action within 60 calendar days from receipt of the notice of the Board's decision, unless the Board extends the time in accordance with paragraph (c) of this section.

(b) The request for extension must be filed in writing with the Board before the 60-calendar day period ends.

(c) For good cause shown, the Board may extend the time for commencing civil action.

#### § 422.1090 Basis, timing, and authority for reopening an Administrative Law Judge or Board decision.

(a) *Basis and timing for reopening.* An ALJ of Departmental Appeals Board decision may be reopened, within 60 calendar days from the date of the notice of decision, upon the motion of the ALJ or the Board or upon the petition of either party to the hearing.

(b) *Authority to reopen.* (1) A decision of the Departmental Appeals Board may be reopened only by the Departmental Appeals Board.

(2) A decision of an ALJ may be reopened by that ALJ, by another ALJ if that one is not available, or by the Departmental Appeals Board. For purposes of this paragraph, an ALJ is considered to be unavailable if the ALJ has died, terminated employment, or been transferred to another duty station, is on leave of absence, or is unable to conduct a hearing because of illness.

#### § 422.1092 Revision of reopened decision.

(a) *Revision based on new evidence.* If a reopened decision is to be revised on the basis of new evidence that was not included in the record of that decision, the ALJ or the Departmental Appeals Board—

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(1) Notifies the parties of the proposed revision; and

(2) Unless the parties waive their right to hearing or appearance—

(i) Grants a hearing in the case of an ALJ revision; and

(ii) Grants opportunity to appear in the case of a Board revision.

(b) *Basis for revised decision and right to review.*

(1) If a revised decision is necessary, the ALJ or the Departmental Appeals Board, as appropriate, renders it on the basis of the entire record.

(2) If the decision is revised by an ALJ, the Departmental Appeals Board may review that revised decision at the request of either party or on its own motion.

#### § 422.1094 Notice and effect of revised decision.

(a) *Notice.* The notice mailed to the parties states the basis or reason for the revised decision and informs them of their right to Departmental Appeals Board review of an ALJ revised decision, or to judicial review of a Board reviewed decision.

(b) *Effect—*(1) *ALJ revised decision.* An ALJ revised decision is binding unless it is reviewed by the Departmental Appeals Board.

(2) *Departmental Appeals Board revised decision.* A Board revised decision is binding unless a party files a civil action in a district court of the United States within the time frames specified in 422.858.

#### Subpart U [Reserved]

#### Subpart V—Medicare Advantage Marketing Requirements

SOURCE: 73 FR 54220, Sept. 18, 2008, unless otherwise noted.

#### § 422.2260 Definitions concerning marketing materials.

As used in this subpart—

*Marketing materials.* Marketing materials include any informational materials targeted to Medicare beneficiaries which:

(1) Promote the MA organization, or any MA plan offered by the MA organization.

(2) Inform Medicare beneficiaries that they may enroll, or remain enrolled in, an MA plan offered by the MA organization.

(3) Explain the benefits of enrollment in an MA plan, or rules that apply to enrollees.

(4) Explain how Medicare services are covered under an MA plan, including conditions that apply to such coverage.

(5) May include, but are not limited to, the following:

(i) General audience materials such as general circulation brochures, newspapers, magazines, television, radio, billboards, yellow pages, or the Internet.

(ii) Marketing representative materials such as scripts or outlines for telemarketing or other presentations.

(iii) Presentation materials such as slides and charts.

(iv) Promotional materials such as brochures or leaflets, including materials for circulation by third parties (for example, physicians or other providers).

(v) Membership communication materials such as membership rules, subscriber agreements, member handbooks and wallet card instructions to enrollees.

(vi) Letters to members about contractual changes; changes in providers, premiums, benefits, plan procedures etc.

(vii) *Membership activities* (for example, materials on rules involving non-payment of premiums, confirmation of enrollment or disenrollment, or nonclaim specific notification information).—

(6) *Marketing materials exclude ad hoc enrollee communications materials, meaning informational materials that—*

(i) Are targeted to current enrollees;

(ii) Are customized or limited to a subset of enrollees or apply to a specific situation;

(iii) Do not include information about the plan's benefit structure; and

(iv) Apply to a specific situation or cover claims processing or other operational issues.

[73 FR 54220, Sept. 18, 2008, as amended at 75 FR 19814, Apr. 15, 2010]

#### § 422.2262 Review and distribution of marketing materials.

(a) *CMS review of marketing materials.*

(1) Except as provided in paragraph (b) of this section, an MA organization may not distribute any marketing materials (as defined in § 422.2260 of this subpart), or election forms, or make such materials or forms available to individuals eligible to elect an MA organization unless—

(i) At least 45 days (or 10 days if using certain types of marketing materials that use, without modification, proposed model language and format, including standardized language and formatting, as specified by CMS) before the date of distribution the MA organization has submitted the material or form to CMS for review under the guidelines in § 422.2264 of this subpart; and

(ii) CMS does not disapprove the distribution of new material or form.

(2) [Reserved]

(b) *File and use.* The MA organization may distribute certain types of marketing material, designated by CMS, 5 days following their submission to CMS if the MA organization certifies that in the case of these marketing materials, it followed all applicable marketing guidelines and, when applicable, used model language specified by CMS without modification.

(c) *Standardized model marketing materials.* When specified by CMS, organizations must use standardized formats and language in model materials.

(d) *Ad hoc enrollee communication materials.* Ad hoc enrollee communication materials may be reviewed by CMS, which may upon review determine that such materials must be modified, or may no longer be used.

[73 FR 54220, Sept. 18, 2008, as amended at 75 FR 19814, Apr. 15, 2010]

#### § 422.2264 Guidelines for CMS review.

In reviewing marketing material or election forms under § 422.2262 of this part, CMS determines that the marketing materials—

(a) Provide, in a format (and, where appropriate, print size), and using standard terminology that may be